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Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 L-03 HA-05 CA-01 SCS-06 SP-02 SS-15
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E.O. 11652: N/A
TAGS: CARR, TU
SUBJECT: PRISONER TRANSFER TREATY: NEGOTIATIONS

REF ANKARA 6058

1. US AND TURKISH NEGOTIATING TEAMS MET BRIEFLY MORNING AUGUST 22. REGARDING PROBLEM OF SUBSTITUTED SENTENCING (REFTEL), US SIDE PROPOSED TWO-TRACK SYSTEM, WHEREBY EACH STATE WOULD FOLLOW PRACTICE REQUIRED BY ITS OWN CONSTITUTION AND LAWS. TURKISH SIDE QUESTIONED WHETHER US COULD VALIDLY DETAIN PRISONERS TRANSFERRED UNDER TREATY WITHOUT BENEFIT OF NEW DECISION BY US COURT, CONFIRMING SENTENCE IMPOSED BY TURKISH COURT. US TEAM ASSURED TURKS SUFFICIENT AUTHORITY WAS CONFERRED BY TREATY ITSELF AND IMPLEMENTING LEGISLATION (PL 95-144) TO PERMIT ATTORNEY GENERAL TO ENFORCE SENTENCE. BOTH SIDES THEN AGREED TO RECESS UNTIL NEXT MORNING SO THAT TURKS COULD CONSULT WITH MINISTRY OF JUSTICE TO DETERMINE WHETHER US RPOPOSAL WAS ACCEPTABLE.

2. TALKS RESUMED AUGUST 23 WITH TWO SIDES PROCEEDING
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METHODICALLY THROUGH TURKISH DRAFT TEXT AS FAR AS ARTICLE 11. TURKS GAVE NO REPEAT NO DEFINITIVE RESPONSE TO US PROPOSAL RE SUBSTITUTED SENTENCING, BUT INDICATED A MUTUALLY ACCEPTABLE FORMULA COULD PROBABLY BE WORKED OUT. MEANWHILE, PRINCIPAL ISSUES OF DISCUSSION WERE:
A. RULE OF SPECIALITY (ARTICLE 6). US SIDE URGED THAT THIS PROVISION BE OMITTED ON GROUND IT WAS MORE PROPERLY

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PART OF EXTRADITION TREATY OR NON-CONSENT TRANSFER TREATY,
SUCH AS EUROPEAN CONVENTION ON INTERNATIONAL VALIDITY
OF CRIMINAL JUDGMENTS. UNDER PROPOSED US-TURKISH TREATY,
BASED ON CONSENT OF PRISONER TO TRANSFER, US WOULD HAVE
GREAT DIFFICULTY IN GIVING UP RIGHT TO PROSECUTE AN
OFFENDER ON PRIOR CHARGES OUTSTANDING AGAINST HIM IN
US. HOWEVER, TURKISH SIDE INSISTED ON RETAINING SOME FORM
OF RULE IN TEXT, PARTICULARLY WITH REGARD TO POLITICAL OR
PURELY MILITARY OFFENSES. LATER IN DAY, ALTERNATIVE
MODIFYING LANGUAGE PROPOSED BY US SIDE WAS ACCEPTED IN
PRINCIPLE BY TURKS.

B. AUTHORITY OF ATTORNEY GENERAL. TURKS CONTINUED
TO EXPRESS UNEASE OVER PROSPECT THAT PRISONER TRANSFERRED
UNDER TREATY MIGHT SUCCESSFULLY CHALLENGE VALIDITY
OF TRANSFER OR OF TREATY ITSELF IN US COURTS. US SIDE
OFFERED ASSURANCES, INCLUDING ADDITIONAL LANGUAGE
TO BE ADDED TO ARTICLE 11 OR ELSEWHERE, THAT ATTORNEY
GENERAL HAD FULL AUTHORITY UNDER TREATY (AS HE DID UNDER
PRIOR TREATIES WITH MEXICO, CANADA AND BOLIVIA) AND
IMPLEMENTING LEGISLATION TO ENFORCE SENTENCE IMPOSED
BY FOREIGN COURT. US SIDE ALSO POINTED OUT PROVISIONS
IN TREATY AND LEGISLATION THAT IF COURT HELD TRANSFER
NOT IN ACCORDANCE WITH TREATY, PRISONER WOULD STILL BE
SUBJECT TO RETURN TO TURKISH CUSTODY, ON TIMELY REQUEST
OF GOT. MOREOVER, BASED ON EXPERIENCE TO DATE, US SIDE
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FELT IT WAS HIGHLY UNLIKELY TREATY ITSELF WOULD BE
DECLARED INVALID BY US COURT.

C. REVIEW OR APPEAL OF SENTENCE (ARTICLE 9). TWO SIDES
AGREED THAT SENTENCING STATE SHOULD HAVE EXCLUSIVE
JURISDICTION OVER ANY APPLICATION FOR REVIEW OF
SENTENCE, ALL APPEALS OR ANY OTHER PROCEEDINGS SEEKING
TO CHALLENGE MODIFY OR SET ASIDE CONVICTIONS. HOWEVER,
REGARDING POWER TO GRANT AMNESTY, TURKS ASKED FOR LANGUAGE
WHICH WOULD PERMIT REQUESTED (RECEIVING) STATE
TO INCLUDE TRANSFERRED PRISONERS IN BENEFITS OF ANY GENERAL
AMNESTY.

3. COMMENT: WORK ON PRISONER TRANSFER TREATY IS
PROCEEDING IN SLOW, BUT CORDIAL, MANNER. MUCH TIME
IS DEVOTED TO EXPLAINING TO OTHER SIDE REQUIREMENTS OF
TURKISH OR AMERICAN LEGAL SYSTEMS. IT HAS BECOME
EVIDENT THAT SOME MEMBERS OF TURKISH SIDE ARE INTENT
ON ADHERING AS CLOSELY AS POSSIBLE TO EUROPEAN
CONVENTION. DIFFICULTIES INEVITABLY ARISE, SINCE
EUROPEAN CONVENTION IS NON-CONSENT REGIME, WHEREAS
PROPOSED US-TURKISH TREATY AND PRIOR TREATIES WITH

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MEXICO, CANADA AND BOLIVIA ARE BASED ON CONSENT OF
PRISONER PRIOR TO TRANSFER. THEREFORE, IT APPEARS
LIKELY IT WILL BE MIDDLE OF NEXT WEEK AT EARLIES
BEFORE TWO SIDES CAN REACH AGREEMENT ON TEXT.
END COMMENT.
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